

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

SUBURBAN PROPANE, L.P.¹

Employer

and

Case 3-RC-11413

**TEAMSTERS LOCAL 317, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that Suburban Propane, L.P., (herein, called the "Employer") is a limited partnership formed under the laws of the State of Delaware and is headquartered at Whippany, New Jersey. In the past 12 months, a representative period, the Employer has

¹ The Employer's name appears as corrected by stipulation at the hearing.

² The Petitioner's name appears as corrected by stipulation at the hearing.

purchased and received at its New York business locations products and equipment valued in excess of \$50,000 directly from entities located outside the State of New York.

Based on the parties' stipulation and the record as a whole, I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The amended petition, filed on February 26, 2004, seeks a bargaining unit of all full-time and regular part-time delivery and propane drivers, service technicians (including master technicians, propane technicians I and II, and service technicians I, II and III) and installation helpers employed at the Employer's Minoa, Brewton and Pulaski, New York facilities. The Employer contends, contrary to the Petitioner, that the following employee classifications should be included in the unit found appropriate herein because they are plant clerical employees: customer service representatives (CSRs), production coordinators,³ service coordinators and plant employees I. The Employer further asserts that the unit must also include employees at the Phoenix, New York facility and specifically, the following positions at that location: delivery route driver, dock/CDL, LP gas tech SSI, senior customer representative and customer representative.

The Petitioner does not seek to include the employees at the Phoenix facility in the petitioned-for unit because it contends they do not share a community of interest with the

³ The Employer seeks to exclude one production coordinator, Diane Smith, as further noted below.

petitioned-for employees at the other three facilities. The Petitioner further asserts that Richard Gumpfer, service coordinator, should be excluded from the unit because he is a supervisor within the meaning of Section 2(11) of the Act, and alternatively, because he is an office clerical employee.

The parties stipulated at the hearing, and I find, that James Lloyd, HVAC manager; Maureen Bailey, customer service manager; Laura Goodson, distribution manager; and Raymond Patraw, Syracuse market manager, are excluded from the unit found appropriate herein because they are supervisors who perform one or more of the duties defined in Section 2(11) of the Act. The parties also stipulated, and I find, that the following employees should be excluded from the unit: all sales employees; production coordinator Diane Smith; gas station attendants; the “contract” employees at Minoa;⁴ and the Phoenix service manager.

Notwithstanding the job classifications set forth by the Petitioner in the petition, the parties agree that the petitioned-for unit consists of delivery drivers,⁵ propane drivers,⁶ service technicians, installers⁷ and installer helpers. These employees are involved in the distribution of heating oil, power fuel and propane to residential, commercial and industrial end users. They also install and repair heating, ventilating and air conditioning (HVAC) equipment for residential customers.

⁴ Contract employees are drivers employed by third-party employers and used by the Employer to supplement its workforce. While the parties did not formally stipulate to exclude contract employees at other facilities, it is clear from the record and the parties’ post-hearing briefs that neither party seeks to include contract employees in the unit.

⁵ The parties stipulated that the “swing person” position, and the “CDL driver/production” position are now designated “delivery driver” by the Employer and that these delivery drivers should be included in the unit.

⁶ The parties stipulated that “driver lead petroleum” position is now referred to as “propane driver” and should be included in the petitioned-for unit.

⁷ It is unclear from the record whether there is a distinction between classifications of technician and installer. However it is undisputed that these classifications should be included in the unit.

FACTS

Background:

The Employer operates in several geographic markets such as the Binghamton, Portland, North Country, Auburn and Utica, New York areas. It is unclear from the record the scope of these markets, or their proximity to the Syracuse, New York market facilities at issue herein. The Employer's corporate headquarters is located in Whippany, New Jersey.

On December 23, 2003, the Employer, Suburban Propane, L.P., acquired Agway Energy Corporation's Syracuse, New York market in an asset purchase. Agway's brand and trade name were included in the sale. Agway employees in the Syracuse market including those located in Brewerton, Minoa, Pulaski and DeWitt, New York, became Suburban Propane L.P. employees on the day of the purchase on December 23, 2003. The Petitioner seeks to represent the employees in the Brewerton, Minoa and Pulaski locations (herein called the "Agway facilities"). The employees at the Agway facilities deliver propane, gasoline, diesel fuel and home heating oil to residential and commercial customers and install and repair HVAC equipment.

The Employer maintains the former Agway customer service center in DeWitt, New York. Contract employees, Suburban employees, and former Agway employees work at the DeWitt facility. Neither the Petitioner, nor the Employer, seeks to include the DeWitt facility in the unit. The DeWitt, New York, service center receives customer calls and inquiries after normal business hours and relays the information to employees in the petitioned-for unit. The DeWitt facility also has storage tanks from which Agway drivers pick up and transport product. It is unclear from the record the extent of operations at the DeWitt location. However, it was one of Agway's regional headquarters and is now part of the Employer's operations.

On March 16, 2000, the Region issued a Decision and Direction of Election in Case 3-RC-10933 finding appropriate a unit of all full-time and regular part-time drivers, service technicians, installers and installer helpers employed by Agway at its Brewerton, Minoa and Pulaski, New York facilities, the same work locations that the Petitioner seeks to represent in the instant proceedings.⁸ In so finding, the Region excluded the customer service representatives (CSRs) from the unit sought by Agway.

The Employer, both prior to and after the Agway purchase, has maintained a facility in Phoenix, New York (the Suburban Phoenix facility), as part of the Syracuse market, where it distributes propane to residential, commercial and industrial users. The Petitioner, for approximately 45 years until 2000, represented a bargaining unit of delivery route drivers, technicians and dock employees, excluding CSRs, at the Suburban Phoenix facility. The Petitioner and the Employer were parties to successive collective-bargaining agreements covering these employees. The Suburban Phoenix employees are currently unrepresented.

The Employer's Agway facilities have Agway or Agway Energy Products signs on the buildings, rather than the Suburban Propane signs. The Phoenix location only has Suburban Propane signs on the building. All four of the Employer's Syracuse market facilities at issue in this proceeding are located in central New York State and are located within 44 miles of each other. The Employer's Agway Pulaski facility is located approximately 25 miles north of the Agway Brewerton facility, approximately 44 miles from the Agway Minoa facility and approximately 29 miles from the Suburban Phoenix facility. The Employer's Agway Minoa facility is approximately 19 miles south of the Agway Brewerton facility and approximately 12

⁸ The Petitioner herein had filed the representation petition in Case 3-RC-10933 on February 16, 2000. The Regional Director directed an election that was held on May 11, 2000. The Petitioner lost the election.

miles east of the Suburban Phoenix facility. The Employer's Agway Minoa facility is approximately 26 miles from the Suburban Phoenix facility.

Raymond Patraw, the Employer's Syracuse market manager, is responsible for operations at the Agway Brewerton, Minoa, Pulaski and the Suburban Phoenix facilities. Patraw currently spends approximately 60 percent of his time at the Brewerton facility, 30 percent at the Minoa facility and 10 percent at the Pulaski facility. He does not spend time at the Phoenix facility.⁹ He reports to Bill Anderson, the Employer's Region 3 district manager, who is located in Fayetteville, New York.¹⁰

Michael Keating, the Employer's vice president of human resources, is located at the Employer's headquarters in Whippiny, New Jersey, and is responsible for labor relations at all four facilities at issue herein. Deborah Lord, who is in DeWitt and is the senior manager of organization development, testified that local management is responsible for labor relations administration with the assistance of regional human resources. Employee paychecks for all four facilities involved herein are inscribed "Suburban Propane" and are issued through the Employer's corporate office in Whippany, New Jersey. After the Employer's purchase of the Agway facilities, the former Agway employees were offered the same fringe benefits available to the Suburban Phoenix employees. These benefits included retirement savings, life insurance, an investment plan, and a health care plan. The Agway compensation and incentive plan, which is different from that of the Suburban employees, will remain in effect until June 30, 2004.

The Agway Facilities:

⁹ Patraw anticipates spending 70 percent of his time at the Phoenix location, however, the record does not indicate that there is any definite plan to do so, or when this will occur.

¹⁰ The Fayetteville facility is four miles from the DeWitt facility and was formerly one of Agway's regional operations locations. It remains as an Employer facility, apparently performing some human resources functions. Neither party contends that any employees located at the Fayetteville facility should be included in the unit.

The three Agway facilities service approximately 5,000 to 6,000 customers. The Brewerton facility delivers propane and fuel, and services various HVAC equipment. Brewerton has two buildings: an office building and a warehouse that are approximately 30 to 40 yards apart. The warehouse stores equipment, oil and propane. The Employer owns approximately 30,000 gallons of propane stored on site. There are two CSRs, three delivery drivers, one propane driver, three master technicians, three service technicians (level II and III), one propane technician II, and two installation helpers, at the Brewerton facility. The Brewerton CSRs report to James Lloyd, HVAC manager. Lloyd reports to Syracuse market manager Raymond Patraw.

The Minoa facility includes an office building with a training department for the company, a warehouse and a retail gas station. Most driver and technician training is performed at this location. CSRs are not trained at this location. At Minoa there are six CSRs, one delivery driver, two master technicians, one plant employee level 1, three propane drivers, one propane technician, one service coordinator and three service technicians (level I and II). There are also two contract haulers that operate out of the Minoa facility.¹¹ Maureen Bailey, customer service manager, who is located at the Minoa facility, supervises the Minoa CSRs and the plant employee 1, Timothy Ezzo. Bailey reports to Patraw.

The Pulaski facility consists of one building with an office and warehouse space, and a separate retail gas station. There are no customer service representatives, two delivery drivers, one propane driver and three service technicians (levels II and III) at Pulaski. The Pulaski drivers report to Laura Goodson at the Brewerton facility.

¹¹ There are three contract haulers employed by the Employer. The location of the third hauler is not included in the record.

Laura Goodson, distribution manager, supervises all delivery and propane drivers at the Agway facilities.¹² She is located at the Brewerton facility. Cheryl Orizino, the Employer's production coordinator, is also located at the Brewerton facility.

Agway Drivers and Technicians:

Drivers at the Agway facilities transport heating oil, diesel fuel and propane fuel to customers. The drivers at the three Agway facilities report to their respective facilities in the morning to start their workday. Each week they receive delivery assignments in their geographical territory. Throughout the workweek, they may receive additional assignments that alter their weekly schedule. They transport propane and other fuels in a tank wagon, which is a heavy truck with a 3,000-gallon tank. Like the Agway technicians, they wear Agway uniforms and drive Agway vehicles. There are a total of 14 propane and delivery drivers at the three Agway facilities. Their wages range from \$14.00 to \$17.37 per hour. The propane drivers' wages range from \$11.00 to \$17.71 per hour. All drivers are eligible for overtime. Typically, they work eight-hour days and staggered shifts. Drivers and technicians are "on call" after hours from approximately 6:00 p.m. to 7:00 a.m. After regular business hours, customer service requests are received by the DeWitt CSRs who contact the Agway drivers or technicians to provide the necessary service. It is unclear from the record the number of drivers who work after hours.

The technicians install and repair HVAC equipment such as furnaces and water heaters primarily for residential customers. The following technician classifications, with their corresponding hourly wage range are employed at the Employer's Agway facilities: master technician (\$17.82 to \$22.25), service technician (levels I through III) (\$11.25 to \$21.48), propane technician I and II (\$16.19 and \$19.06) and installer helper (\$10.84). The most skilled

¹² The Suburban Phoenix facility drivers do not report to Goodson.

HVAC technicians are the master technicians. The service technicians' skills are graded according to their respective grade levels. The installation helpers (located at the Brewerton facility only) help the master technicians install energy equipment.

The record is unclear as to what training is required to distinguish the levels of Agway technicians. Some technicians have plumber licenses. Technicians that service air conditioning equipment must have refrigerant training. The technicians use a handheld computer device to record their work and for customer billing and scheduling purposes.

Most Agway technicians are dispatched from their homes. They begin their workday by reporting directly to the customer's site and they drive the Agway vehicles to their respective homes at the end of the workday. They are compensated for portal-to-portal travel. They supply and replace their own hand tools. The Agway facility technicians wear Agway uniforms and drive Agway vehicles. They work eight-hour shifts.

Approximately 15 Agway technicians work staggered shifts between 5:00 or 5:30 p.m. and 7:00 a.m., after normal business hours, both weekdays and weekends. Technicians that work a complete night shift receive a \$2.00 per hour night differential. Outside of normal business hours, the driver and technicians are dispatched by CSRs at the Employer's DeWitt facility. The DeWitt CSRs do not dispatch technicians from the Suburban Phoenix facility.

Agway technicians and drivers also serve as backup to the Agway after-hour, on-call personnel. A rotation schedule is used to determine which of the Agway technicians will work as backup on the weeknights and weekends.¹³ The CSRs in DeWitt notify the Agway backup drivers and technicians of customer calls for service.

¹³ The drivers are also "on call," however it is unclear from the record if they are on the same rotation schedule with the technicians.

The Agway drivers and technicians must maintain a commercial driver's license. They are subject to the Department of Transportation ("DOT") guidelines such as DOT physicals, and random drug and alcohol testing. Agway drivers and technicians use pagers and cellular telephones to communicate with the CSRs, with each other and with local management. The Agway drivers and technicians use handheld computer devices, which track productivity (including hours of work), delivery amounts and customer service time. The handhelds interface with the order tickets generated by computer. The drivers report their work hours and delivery amounts by inputting the data into the handheld devices. This information is downloaded from the handheld devices to computers via docking stations at the respective facilities. An end-of-the day report is generated from this information by the technicians and drivers. They attach the report to their orders for the day and give the information to the Brewerton CSRs.

The Agway drivers and technicians generally obtain equipment, oil and propane from the Brewerton warehouse. Propane drivers from the Agway facilities also pick up some propane from the Suburban Phoenix facility. James Lloyd, HVAC manager, testified that this occurs between two to six times per day. Lloyd also testified that he has not observed any other integration of operations of the Phoenix facility with the Agway facilities. The record does not establish that the Agway propane drivers have contact with the Suburban Propane drivers when picking up propane at the Phoenix facility. The Agway drivers also pick up propane from the Employer's DeWitt facility.

Raymond Patraw, the Employer's Syracuse market manager, testified that on or about March 3, 2004, an Agway technician performed a piping job for a Suburban customer. There is also some record evidence that Suburban emergency calls were directed to one of the Agway facilities. It is unclear from the record the nature of the emergency calls, which employee

classifications were involved, the number of such calls, or which Agway facility was involved. James Lloyd testified that for the past year no Phoenix technicians have been on call; therefore, no Agway technician substituted for a Phoenix technician.

Agway CSRs:

The Agway CSRs are employed at the Agway Brewerton, Minoa and Suburban Phoenix facilities. There are no CSRs at the Agway Pulaski facility. The CSRs' qualifications include a high school diploma or its equivalent and some customer service experience. They are required to have excellent customer service skills and written and oral communication skills. CSRs are given a 10 to 15 minute pre-employment test to assess their communication skills. CSRs are hourly employees. Their hours of work are from approximately 7:00 or 8:00 a.m. until 3:30 or 4:40 p.m., Monday through Friday, with a half-hour unpaid lunch break. Seasonal overtime is available in the fall and winter months. The Agway CSRs' wages range from \$11.70 to \$15.04 per hour. They wear business attire rather than uniforms. CSRs are evaluated on their customer service skills and customer credit management.

Customers contact the Agway CSRs by telephone to request fuel deliveries. Most delivery requests are automatically generated by computer based on customer accounts set up by the CSRs; however, for unscheduled orders, the CSRs manually generate order tickets from their computers and the tickets are automatically transferred to the appropriate Agway facilities for delivery. The Agway CSRs schedule service work to be performed by the technicians by inputting customer service requests into the customer service computer program.

In performing their duties, the Agway CSRs use the customer service computer system, connected to the three Agway facilities to access customer billing, service scheduling, inventory, productivity management and customer inquiries. They can access the Internet, the Agway

intranet, and more recently, the Suburban intranet. They use standard office equipment such as desks, computers, calculators, file folders and telephones to perform this work.

All work orders in the Agway facilities are maintained at Brewerton. The two CSRs at Brewerton, Shari Clement and Sheryl Pendell, share a common work area, adjacent to the managers' offices, and they have their own desks and computers. In addition to the CSR duties described above, Clement performs payroll functions by inputting into a computer the number of work hours for the technicians and drivers. She is responsible for monitoring the drivers' and technicians' time usage for accuracy. This information is used for billing, payroll and to evaluate the drivers and technicians' work performance. The Brewerton CSRs or the production coordinator may assist the drivers or technicians to download the information from the handheld devices by preparing the docking station computer with a few keystrokes to receive the information. Clement communicates with the Agway drivers and technicians from zero to four times per day, concerning problems with the accuracy of their time records for billing and payroll purposes. She contacts Agway drivers to substitute for other Agway drivers who are out sick. She assists with customer complaints by talking to customers and forwarding a copy of the work order that is the subject of the complaint to service coordinator Richard Gumpfer in Minoa.

The duties of the other Agway Brewerton CSR, Sheryl Pendell, includes coordinating HVAC services, inventory control, and customer billing. Pendell schedules the work for two installation crews in the Agway Brewerton and Minoa facilities. The sales representatives and Pendell arrange work schedules for the HVAC service with the customers. She orders the necessary equipment for the installation. Pendell communicates with the Agway technicians approximately three to four times per day regarding HVAC installation orders and scheduling changes. Pendell has visited the field with the installers for training purposes. It is unclear from

the record if this is required and, if so, how frequently this occurs. Pendell may come into contact with the Agway drivers on the warehouse loading dock when she inspects vendor deliveries.

Pendell is largely responsible for the Agway facilities' inventory. She ensures items are ordered and delivered to the facilities. She uses the Internet to place orders from suppliers. After the Employer's salesperson sells the HVAC service or installation, she orders the equipment for the installation, inspects the ordered equipment upon delivery, and schedules the Agway installation crew. Pendell also has direct contact with customers to sell and schedule service for those customers who decide to purchase service after meeting with a salesperson. Once installation service is completed, Pendell contacts the customers to insure they are satisfied with the work performed. She also does the billing for the installation. Pendell and Clement do not work after hours. During the Employer's busy season, Pendell and Clement may work weekends for several hours. Pendell and Clement's normal work hours at the Agway Brewerton facility are from 7:00 or 8:00 a.m., to 3:30 or 4:30 p.m.

The six CSRs at the Agway Minoa facility report to customer service manager Bailey. The Minoa CSRs contact the Agway technicians and drivers in person or by cell telephone or radio approximately 75-100 times per day. It is unclear from the record how many of these calls are from or to the contract haulers located at the Minoa facility. It is unclear from the record how frequently information is relayed to or from the Agway technicians and drivers at Minoa via the handheld computers, or by work orders placed in the work bins at the facility. The Minoa handheld computer docking station is located in the employee break room, which is used by all employees. The CSRs at Minoa order fuel for the Minoa and DeWitt service center. They also order fuel from the Employer's Watertown facility to be delivered by the contract haulers to the

Cazenovia gas station.¹⁴ The CSRs at Minoa also have duties at the Employer's Agway Minoa retail gas station. They change gas prices, assist with the station's credit card machine, monitor customer gas credit card accounts and cash reports. They review reports for customers that are past due on their accounts, and attempt to collect past due payments by calling and sending letters to the customers.

Plant Employee I:

Timothy Ezzo, the sole plant employee level 1, works at the Agway Minoa facility. He is supervised by Maureen Bailey, customer service manager. He performs maintenance work at the Minoa facility, including shoveling snow, mowing the lawn, spreading stones, cleaning up fuel spills and changing light bulbs. The Agway drivers and technicians may inform Ezzo of the need to perform some of these tasks. He also maintains inventory for the gas station of items such as oil and windshield washing fluid. Ezzo is an hourly employee and works from 4:00 or 5:00 a.m. until noon.

Plant employee 1, Ezzo also performs office duties such as maintaining the cash reports for the Agway Minoa facility. The report lists the money that the Employer earned at the facility, including bank deposits for customer payments and monies from the retail gas station. The report is reviewed and signed by Bailey and sent to the Employer's DeWitt customer service center. Ezzo also is responsible for the Minoa contract hauler payroll.¹⁵

Production Coordinator:

Cheryl Orizino is the Employer's production coordinator.¹⁶ Her office is located at the Brewerton facility, where she works from 8:00 a.m. to 4:30 p.m. She is an hourly employee with

¹⁴ The Cazenovia gas station is not owned by the Employer. The station is paid by the Employer for each gallon of gasoline it sells.

¹⁵ The Employer has two contract haulers that work out of the Minoa facility.

¹⁶ In 1999 or 2000, Orizino managed the Agway Minoa and Pulaski facilities.

a half-hour unpaid lunch. The wage range for the production coordinators is between \$13.59 to \$16.35 per hour and she is eligible for overtime. She reports to Raymond Patraw, Syracuse market manager. Orizino's primary duty is to account for the Agway Brewerton and Minoa liquid fuel and propane inventory.¹⁷ Eighty-five percent of her work function is inventory. Five percent of her duties includes inputting payroll in the computer system. Orizino also assists customers in making payments and with financing services and at the Brewerton location. The customer transactions occur approximately five times a day and each transaction takes approximately 15 minutes to complete. Orizino is evaluated on her ability to reconcile inventory and her skill at handling walk-in customers.

Using the Agway Brewerton and Minoa drivers' end-of-the-day reports, Orizino inputs productivity data on a daily basis into a computer spreadsheet program.¹⁸ The Employer's Syracuse market manager, Patraw and distribution manager, Goodson, use this information to evaluate the drivers' productivity. Orizino contacts the drivers when there is a discrepancy in inventory or productivity information. She may contact the drivers to track their pickup and deliveries or to reconcile the inventory. With regard to drivers' and technicians' payroll, she may contact them if the production information is incorrect for payroll; they contact her if there is a problem with their paychecks. This contact occurs face-to-face or via telephone.

Service Coordinator:

Richard Gumpfer has been the service coordinator at the Agway Minoa facility since March 2003. Prior to that time, from October 2002 until March 2003, he was the Syracuse HVAC manager. It appears that Gumpfer will report to HVAC manager James Lloyd. Gumpfer is a salaried employee and earns approximately \$55,000 per year. He has a different

¹⁷ The Employer does not seek to include in the unit the production coordinator at the Pulaski facility, Diana Smith, who performs inventory duties similar to Orizino's duties. Smith, like Orizino, reports to Patraw.

¹⁸ Carol Kline performs the same task for the Pulaski location. The parties stipulated to exclude Kline from the unit.

incentive plan than the petitioned-for unit employees. His hours of work are from 6:00 a.m. to 4:00 p.m. He is not eligible for overtime.

Gumpper's workstation has two desks, a dispatch telephone, and two large cork dispatch boards. Gumpper uses the dispatch telephone to give work assignments to the technicians. Gumpper communicates with the technicians approximately 50 times per day. There are three CSRs in Gumpper's general work area. The CSRs answer the dispatch telephone when Gumpper is not available.

Gumpper's primary job function is to schedule and dispatch technicians to service or install HVAC equipment at the Agway facilities. He does not schedule or dispatch the Suburban Phoenix facility technicians. HVAC manager, Lloyd, who is located at the Suburban Phoenix facility, determines the overall work hours for the technicians and Gumpper assigns individual Agway technicians to a particular assignment. He has the discretion to increase or decrease the number of jobs performed each day based on his projections of what needs to be accomplished. He is solely responsible for coordinating the HVAC department by dispatching Agway technicians in the most productive manner to meet department budgets given to the HVAC manager.¹⁹ Patraw testified that when Gumpper was formerly the HVAC manager, he was involved in dispatching technicians and continues to do so as production coordinator. Patraw described the more recent HVAC manager's position as that of a "business manager" who no longer gets involved in the details of dispatching.

To most efficiently coordinate which technician will perform a job, Gumpper considers the technician's workload, knowledge, skill level, and the location of the job in relation to the technician's home. Gumpper reassigns work from one technician to another to accommodate

¹⁹ Gumpper is evaluated on the department's "contribution, overhead and profit levels" relative to the department's budget.

work volume; he also moves technicians from one location to another at the Agway facilities based on the workload.

Technicians contact Gumpfer when they are behind schedule on an assignment. Gumpfer can reassign the technician's next assignment to another technician. Each day he schedules the technicians using a computer. The technicians are scheduled in one-hour work slots. The CSRs and Gumpfer fill in the slots with the technician's name and assignment and post the assignments on the corkboard. Technicians call into the office, or Gumpfer may fax work orders to the technicians at Agway Pulaski and Brewerton facilities. Gumpfer testified that he does not have the authority to hire, fire or discipline employees.

Approximately 30 or 40 percent of Gumpfer's time is spent dispatching technicians. In addition, Gumpfer orders parts for the Brewerton and Pulaski facilities, and during the busy winter season, he delivers parts to these facilities approximately two times per week. Gumpfer spends approximately 10 to 15 percent of his time ordering and moving parts. Approximately 30 percent of his time is spent talking to customers via telephone about technical issues and customer complaints.

As service coordinator, Gumpfer has participated in the interviews of three prospective employees for technician jobs. Gumpfer testified that he spoke to these candidates concerning their employment history. These conversations occurred with Rick Fowler, the HVAC manager at that time, in Fowler's office. Gumpfer was invited by Fowler to meet the three individuals. Gumpfer testified that the meeting conversations were to "get a feel" for them and "they get a feel for me." Fowler hired the three individuals. It is unclear from the record if Gumpfer was involved in the hiring decisions.

The Suburban Phoenix Facility:

The Suburban Phoenix facility services approximately 3,600 customers. The Phoenix facility has several buildings including an office and warehouse. At this location, the Employer engages in the retail and wholesale distribution of propane, propane-related heating products, and the repair of propane-fueled appliances. The facility exclusively stores propane in its five-acre yard. Unlike the Agway facilities, the Suburban Phoenix location does not sell non-propane type fuels. The following employees work at the Phoenix facility: five delivery route drivers, two dock/CDL workers, two LP gas tech-SSI employees, one senior CSR and two CSRs.

James Lloyd, HVAC manager, is located at Suburban's Phoenix facility, where he also serves as facility manager. He does not have an office at the three Agway facilities. Lloyd has managed the Suburban Phoenix facility since 1996. He reports to Raymond Patraw, the Employer's Syracuse market manager. Lloyd testified that he was appointed HVAC manager on the day of the hearing, and had not yet assumed the duties of HVAC manager. As HVAC manager, Lloyd testified that he would be responsible for the Agway technicians, the two Brewerton CSRs, and the service coordinator in Minoa (Richard Gumpfer, the former HVAC manager).²⁰ He testified that he would perform the HVAC manager duties from the Phoenix facility, although his location at the Phoenix facility may not be permanent.

Debbie Schnurr, the service manager, is located at the Suburban Phoenix facility, where she has her own office. She manages the day-to-day operations at that facility. She coordinates the service work among the technicians and schedules the delivery route drivers. After all the service work orders are collected from the Phoenix facility CSRs, she arranges the service work among the Phoenix technicians. Schnurr approves vacation leave for technicians and delivery

²⁰ Prior to Lloyd, Rick Fowler was the HVAC manager. His employment ended approximately 10 days before the start of the hearing in this matter.

route drivers. She also approves temporary leave and rearranges work schedules to accommodate leave. It does not appear from the record evidence that facility and HVAC manager, Lloyd rejects or alters Schnurr's approval of vacation and temporary leave.

All of the Suburban Phoenix employees are hourly employees. They receive a half-hour unpaid lunch break and are eligible for overtime. Their compensation and incentive plan and wage range is different from those of the employees at the Agway facilities. The Agway compensation and incentive plan remains in effect until the end of the Agway fiscal year, on June 30, 2004. The Employer intends to combine all of the employees' compensation program at the end of the 2004 summer.

Suburban Phoenix Drivers and Technicians:

The delivery route drivers at the Suburban Phoenix facility have duties similar to the duties of the Agway propane drivers. The Phoenix drivers transport propane to residential and commercial customers. They are assigned a designated route and drive trucks that contain 2,500 to 3,500 gallon barrels to transport propane.

The Suburban Phoenix drivers wear Suburban Propane uniforms and drive Suburban Propane vehicles. They must maintain a commercial driver's license, and are subject to the same DOT guidelines as the Agway drivers. The Phoenix drivers start and end their workday at the Phoenix facility. The Suburban Phoenix drivers use handheld computers that are different from those used by the Agway drivers and technicians, and which do not interface with the Agway facilities' computer system. The Suburban Phoenix drivers use a time sheet, rather than a handheld device, to record their work hours.

The Suburban Phoenix drivers work 40 hours per week, on 8 to 10-hour shifts beginning at approximately 6:00 a.m. The Phoenix drivers have cellular telephones and are on call for

customer emergency service calls. These calls usually occur after normal business hours. The Phoenix drivers take turns being on call on a weekly basis. An independent answering service notifies the drivers of emergency calls. Drivers complete a report of the emergency calls for Phoenix service manager Debbie Schnurr. One Phoenix driver's regular work shift is from 4:00 p.m. until 12:30 a.m., and he is the first to receive emergency calls. The Phoenix drivers' wages are between \$13.00 and \$17.37 per hour and they are paid \$10 per day during the week they are on call with overtime pay.

There are two LP Gas Techs – SSI (herein, Phoenix technicians) at the Suburban Phoenix facility whom the Employer seeks to include in the unit. They are responsible for propane installations and the repair of propane-fueled appliances, such as stoves and dryers. They drive a half-truck to the customer's site. One LP Gas Tech –SSI has a CDL license. Their wage range is \$13.32 to \$17.38 per hour. They work from 8:00 or 8:30 a.m. until 5:00 or 5:30 p.m., Monday through Friday. The two Phoenix technicians do not work "on-call" after hours.

Suburban Phoenix dock/CDL Employees:

There are two dock/CDL employees at the Suburban Phoenix facility. They are part-time employees and work from 8:30 a.m. to 4:30 p.m., Monday through Friday. The dock/CDL employees spend most of their time in the Phoenix facility. Their duties include unloading rail cars, filling gas cylinders and plant maintenance. Their plant maintenance duties involve shoveling snow, sweeping the dock, cleaning the warehouse, filling the propane trucks and repairing and filling propane tanks. They occasionally drive a daily route or replace a driver for a particular stop. There is no indication from the record how frequently they work as replacement drivers. They maintain a CDL license and operate two service vehicles and a truck.

There is no similar classification in the petitioned-for unit at the Agway facilities. There is no comparable position at the Agway facilities.

Suburban Phoenix CSRs:

There are three CSRs (including one senior CSR) at the Suburban Phoenix facility. Their wages range from \$10.61 to \$14.90 per hour. They report to the facility manager and new HVAC manager, James Lloyd, who is also at the Phoenix facility. The three Phoenix CSRs work in a room with desks and computers near Lloyd's office. Service manager Schnurr works in the same room with the CSRs. The Suburban Phoenix CSRs have similar job qualifications, duties and functions as the Agway CSRs. They work with the customers in the Phoenix area and the drivers and technicians at the Suburban Phoenix facility. The Phoenix CSRs, like the Agway CSRs, perform such duties as customer billing, cashing out at the end of the day, and taking credit card payments from customers over the telephone. They collect cash from customers and give drivers receipts for the cash payment brought in by the drivers. The computers used by the Suburban CSRs are networked with the Employer's Whippany, New Jersey, computers on which the Suburban customer database is stored.

The Suburban Phoenix CSRs work regular business hours between 8:00 or 8:30 a.m. to 5:00 p.m. One of the CSRs is part time. They are eligible to work overtime, but this occurs only infrequently during the winter busy season. The Suburban Phoenix CSRs have a similar degree of contact with the drivers and technicians as do the Agway CSRs.

ANALYSIS

Unit Scope:

It is well established that the Act requires only that the petitioned-for unit be appropriate. It does not require that the unit be the only appropriate, or even the most appropriate unit.

Verizon Wireless, 341 NLRB No. 63 (March 26, 2004); Overnite Transportation Co., 322 NLRB 723 (1996); Dezcon, Inc., 295 NLRB 109 (1989); Omni International Hotel, 283 NLRB 475 (1987).

The unit sought by the petitioner is always a relevant consideration. Lundy Packing Co., 314 NLRB 1042, 1043 (1994). Indeed, in Omni International Hotel, 283 NLRB 475 (1987), the Board stated that "the Act allows a union to petition for *an* appropriate unit, and does not require it to seek the *most* appropriate unit, even when a different unit than that petitioned-for might be more appropriate than the one it seeks." (emphasis in original). Once the petitioned-for unit is found appropriate, an employer's alternative unit proposal need not be considered. P.J. Dick Contracting, 290 NLRB 150 (1988). It is therefore irrelevant that a larger unit might also be appropriate.

A unit is appropriate when the employees in the petitioned-for unit share a community of interest. In a multiple location unit, the Board balances the extent of local autonomy against the extent of centralized control over daily operations, personnel and labor relations; bargaining history; employee transfer and interchange among locations; the similarity in employee skills, duties and working conditions; functional integration of operations and geographical proximity. Verizon Wireless, *supra*; Oklahoma Installation Co., 305 NLRB 812 (1991), citing Dezcon, Inc., *supra*, and P.J. Dick Contracting, *supra*.

The traditional community of interest analysis is applied, without a single-facility or employer-wide presumption, when the petitioned-for unit includes multiple locations and neither party seeks an employer-wide unit. See e.g., Verizon Wireless, *supra*.; Macy's West Inc., 327 NLRB 1222 (1999). In the instant case, both the Petitioner and the Employer concede that they are not seeking an employer-wide unit. Accordingly, there is no employer-wide presumption

herein. The Employer asserts that a market-wide unit should be given additional weight to determine the scope of the unit.²¹ However, the Employer's DeWitt, New York, location is physically located in the Syracuse market; but neither party seeks to include in the unit employees at this facility.

Employee interchange and functional grouping is important in finding a multi-facility unit appropriate. CCI Construction Co., Inc., 326 NLRB 1319 (1998); Oklahoma Installation Co., 305 NLRB 812 (1991). In CCI Construction Co., Inc., the Board denied review of the Regional Director's finding appropriate a multi-facility unit. The employer maintained several facilities in its mid-Atlantic region including several in Pennsylvania, Ohio, Maryland and Virginia. The petitioner sought to represent employees in Pennsylvania only. The employer asserted that a unit of the employees in the Pennsylvania facilities was inappropriate because they lacked a distinct community of interest from employees in the other locations. Rejecting this argument, the regional director found that the Pennsylvania multi-facility unit appropriate because the employees had similar skills and functions, centralized labor relations and managerial oversight in Pennsylvania, and employee transfers between the Pennsylvania locations, and no interchange of employees from the other locations with the Pennsylvania employees.

In Oklahoma Installation Co., supra, the Board found the multi-facility petitioned-for unit appropriate where there was employee interchange among the facilities. The Board relied on the fact that the employer moved employees from one location to another as needed.

A petitioned-for multi-facility unit, carved out of the employer's geographical system, is appropriate where there is substantial local autonomy, contact between petitioned-for employees, common terms and conditions of employment and geographical proximity. Verizon Wireless,

²¹ Citing Stormont-Vail Healthcare, Inc., 340 NLRB No. 143 (November 28, 2003).

341 NLRB No. 639 (March 26, 2004). In Verizon Wireless, the employer had centralized administrative structure, common employment terms such as vacation, leaves of absence and other time off; common uniform benefits program, national wage structure; and employees had similar skills and functions. The Board found these facts insufficient to conclude that the multi-location petitioned-for unit was inappropriate, where there was a lack of interdependence with the additional locations the employer sought to include in the unit; local managers had the authority to hire, discipline and schedule employees; and there was evidence of permanent transfers.

Applying the above standards, I conclude, and the record establishes, that the scope of the petitioned-for unit is appropriate. Thus, the employees at the Suburban Phoenix facility do not share a sufficient community of interest with the employees in the petitioned-for Agway unit to mandate their inclusion in the unit. For the following reasons, I find the scope of the petitioned-for unit appropriate: 1) The employees at the Agway facilities have significant interchange, and there is no interchange between them and the Phoenix employees; 2) The Agway facilities are functionally integrated and they are distinct from the Phoenix facility; and 3) The petitioned-for locations maintain considerable autonomy in departmental operations and supervision.

Employee interchange among the petitioned-for unit is of great importance in determining the appropriateness of the unit. Oklahoma Installation Co., supra,. Employer witness, Richard Gumper, testified that the technicians in the petitioned-for unit move from one Agway facility to another as needed, but do not work at the Phoenix facility. In addition, the Agway technicians regularly rotate serving as backup to the “on call” staff after hours. The Phoenix facility’s technicians do not work at the Agway facilities and are not on call after hours.

The Employer relies upon Macy's West, Inc., 327 NLRB 1222 (1999) and Alamo Rent-A-Car, 330 NLRB 897 (2000) in support of its assertions that the petitioned-for unit is inappropriate. These cases are distinguishable from the instant case.

In Macy's West, Inc., supra, the Board found "most significant" temporary employee interchange among employees in the broader unit, thus finding the smaller unit inappropriate. Id. at 1223. As previously noted, in the instant case there is no evidence of regular interchange among employees in the broader unit urged by the Employer.

The Employer references one incident, on or about March 3, 2004, as evidence of temporary employee interchange. On this date, an Agway employee performed a piping job for a Suburban Phoenix customer. However, there is no evidence that the Agway employee was in contact with a Phoenix employee while performing the piping job which was offered as evidence of interchange. This isolated occurrence is insufficient to establish temporary interchange. In addition, the record evidence regarding Suburban emergency calls directed to one of the Agway facilities is unclear. The record fails to disclose the nature of the emergency calls, which employee classifications were involved, the number of such calls, or which Agway facility was involved. Moreover, even assuming the emergency calls were for a technician, there are no technicians on call at Phoenix; therefore, the Agway employees could not substitute for Phoenix technicians. Thus, this evidence concerning interchange is, at best vague and inconclusive. See New Britain Transportation, 330 NLRB 397, 398 (1999)(evidence of temporary employee interchange without context lacked evidentiary value).

In Alamo Rent-A-Car, supra, the Board found insufficient temporary interchange among locations in the petitioned-for unit to warrant the exclusion of the same classification of employees in two additional locations. In so finding, the Board in Alamo stated that "there is no

indication that the employer regularly utilizes a system of temporary transfers, floaters or rotation of employees among any of its facilities.” Id. at 898. In the instant case, the technicians and drivers rotate solely among the Agway facilities on a regular basis. The Phoenix drivers and technicians do not work at the Agway facilities. Thus, the Agway employees in the petitioned-for unit have regular and substantial interchange to support an appropriate unit.

Operations that are functionally integrated share executive, managerial and engineering or service functions. J. Ray McDermott & Co., Inc., 240 NLRB 864 (1979). While a high degree of functional integration supports a finding of an appropriate unit, an employee grouping with operations functionally distinct supports finding a separate unit. Ridson Manufacturing Co., Inc., 195 NLRB 579 (1972); Hot Shoppes, Inc. 130 NLRB 138, 141 (1961). In Ridson, the Board found a lack of functional integration where the employer organized its plant departments to operate “independently from each other and each had its own identity.” Id., at 580. In this regard, the employer’s facilities had separate day-to-day management, personnel hiring and records, equipment and a lack of employee interchange with employees sought in the broader unit.

The petitioned-for Agway facilities are functionally distinct from the Phoenix facility. They have independent day-to-day supervision and no employee interchange with the Phoenix facility. The Agway facilities provide fuel, oil and propane delivery and HVAC services. The services provided by the Phoenix facility are limited to propane delivery and non-HVAC appliance installation and service. The petitioned-for locations have their own computer software, billing systems, customers’ credit and inventory management separate from those of the Phoenix facility. The Employer continues to treat the Agway facilities as a separate entity. In this regard, the Employer purchased and continues to use the Agway brand and trade name.

Unlike the Phoenix employees, the petitioned-for employees wear Agway uniforms and drive Agway vehicles. Personnel files are maintained at Brewerton for all the petitioned-for employees, but not for the Phoenix facility employees. All of the customer orders at the Agway locations are maintained separately at Brewerton. The Agway employees have a different compensation plan, wage structure and job classifications from those of the Phoenix employees, although there are certain common benefits provided the Agway and Phoenix employees. There is no comparable classification in the petitioned-for unit to the Phoenix Dock/CDL position.²² Conversely, there is no comparable classification at Phoenix to the master technician classification in the petitioned-for unit.²³

A petitioned-for unit maintains its autonomy in a centralized administrative structure when local management has an important role in performing labor relations functions. See, Verizon Wireless, 341 NLRB No. 63 (March 26, 2004); New Britain Transportation, 330 NLRB 397 (1999)(autonomy found where local management daily decide employee schedules, assignments, temporary transfers, temporary leave requests and assisted with problems); First Security Services, 329 NLRB 235 (1999)(autonomy found where local supervision was involved in critical day-to-day issues such as work assignments and evaluations, and employees wore separate uniforms); Equitable Life Assurance Society, 192 NLRB 544 (1971).

Here, the department managers, such as the distribution, HVAC and CSR managers have a great deal of local autonomy. Lord, senior manager of organization development, testified, “local managers enforce labor policies, probably working with regional HR.” There is no direct

²² Unlike the drivers and technicians in the petitioned-for unit, the dock/CDL employees’ duties, include unloading rail cars, fill cylinders and plant maintenance such as shoveling snow, sweeping the dock and cleaning the warehouse. The dock/CDL employees spend most of their time at the plant facility, unlike the drivers and technicians.

²³ Indeed, Raymond Patraw, the Syracuse market manager, testified that the master technician classification is the most highly trained, seasoned and tested of all of the technician classifications.

evidence that regional human resources or the national vice president of human resources, Michael Keating, is involved in labor policy enforcement. In Equitable Life Assurance Society, supra, the Board found a substantial degree of autonomy where division management's recommendations were "tantamount" to policy enforcement and where division management controlled the day-to-day operations. Id at 545. Here, Richard Fowler, the former HVAC manager hired three employees in Agway's HVAC department. Laura Goodson is solely responsible for the day-to-day supervision of the drivers in the petitioned-for unit, but not for the drivers in Phoenix. Goodson's immediate supervisor, Patraw, testified that Goodson has the authority to hire, fire, discipline, assign work, approve leave requests and evaluate all of the Agway drivers who report to her. While Patraw reviews employee performance evaluations, there is no evidence in the record that regional or market management reviews or approves the exercise of her supervisory authority at the Agway facilities. Similarly, there is no record evidence that there are limits to Maureen Bailey's day-to-day supervisory authority over the Agway Minoa CSRs.

While James Lloyd was appointed HVAC manager on or about the day of the hearing herein, the record evidence does not support a finding that Lloyd actually supervises the day-to-day activities of the Agway technicians. He testified that he has not yet assumed the duties of HVAC manager, and he remains at the Phoenix facility. Prior to Lloyd's appointment, the Agway and Phoenix technicians were each independently supervised. There is no evidence that this has changed. In this regard, the two LP Gas Tech-SSI technicians at the Phoenix facility report directly to Lloyd and Debbie Schnurr, the Phoenix service manager. However, the record establishes that Richard Gumper, service coordinator, makes decisions regarding schedules, assignments and temporary transfers for the technicians in Agway Brewerton, Minoa and Pulaski

facilities. Debbie Schnurr manages the day-to-day operations at Phoenix.²⁴ Similar to Gumper's responsibilities for the Agway facilities, she assigns work on a daily basis to the Phoenix technicians and coordinates the schedules for the Phoenix delivery route drivers. Thus, the record establishes that the employees in the petitioned-for unit are supervised separately from the employees at Phoenix.²⁵

The Employer's Phoenix facility is not functionally integrated with the Agway facilities. They perform separate services for separate customers. Phoenix, unlike Agway, does not sell non-propane fuel or sell and service HVAC equipment. The petitioned-for employees wear Agway uniforms and drive Agway vehicles. The Phoenix employees wear Suburban Propane uniforms and drive Suburban Propane vehicles. The Employer claims that it intends to integrate the four locations, but there have been no specific steps taken to integrate the Employer's operations other than appointing Lloyd HVAC manager and including the Phoenix location into the Syracuse market under Patraw. There is no evidence of any specific plan, or time frame, to integrate the delivery and HVAC services of Agway with the work at Phoenix. James Lloyd testified that he has not observed any integration of the Agway facilities with the Phoenix location, other than the pickup by Agway drivers of some propane from the Suburban Phoenix facility.²⁶

Lastly, I note, the employees at the Agway facilities have some conditions of employment that are distinct from the Phoenix employees. The Agway technicians are "on call,"

²⁴ Neither party asserts that Schnurr should be included in the unit.

²⁵ I find it unnecessary to decide whether Schnurr is a supervisor within the meaning of the Act to conclude that the Agway employees are supervised separately from the Phoenix employees, as I have concluded below, that service coordinator Gumper is a supervisor within the meaning of the Act, and that he directs the work of the Agway technicians. He does not direct the work of the Phoenix technicians. As noted above, Laura Goodson, the distribution manager, supervises the drivers at the Agway facilities, but does not supervise the drivers at Phoenix.

²⁶ I note that Agway drivers also pick up propane from the DeWitt facility, which facility the Employer does not seek to include in the unit.

and begin and end their workday from home. The Phoenix technicians are not “on call,” and report to the Phoenix facility daily. The Agway technicians’ wage range is considerably higher, with a maximum rate of \$22.25 per hour, compared to the Phoenix technicians’ highest wage rate of \$17.05 per hour. Employees at the Agway facilities clock in for work by using their handheld computers. The Phoenix employees use time sheets. The Agway technicians have plumber licenses and refrigerant training because they service HVAC equipment. Phoenix technicians are not required to have such licenses and training because they only work with propane-fueled appliances such as dryers and stoves. The Phoenix drivers who are on-call are paid \$10 per day and time and a half overtime; the on-call Agway drivers and technicians are paid their normal hourly and overtime rate. Finally, the employee classifications at the Agway facilities are different from those at the Phoenix facility. In this regard, there is no employee classification at the Agway facilities similar to the dock/CDL employees who work at the Phoenix facility, and no master technician classification at the Phoenix location similar to such classification at the Agway facilities.

Accordingly, I find petitioned-for multi-facility unit consisting of the Employer’s Agway facilities in Brewton, Minoa, and Pulaski facilities to be an appropriate unit.

Unit Composition:

The Employer contends that the petitioned-for unit of drivers and technicians should also include the CSRs, production coordinator, service coordinator and plant employee I, because these employees share a community of interest with the employees in the petitioned-for unit.

Drivers constitute an appropriate unit unless they are so integrated with a larger unit that they lose their separate identity. Overnite Transportation Co., 322 NLRB 723 (1996). Drivers are a “functionally distinct group possessing skills and qualifications” different from production

employees. Pacemaker Mobile Homes, 194 NLRB 742, 743 (1971). Plant clerical employees may be included in a production and maintenance unit, if they generally share a community of interest with the employees in a plant-wide unit. Brown & Root, Inc., 314 NLRB 19 (1994); Raytee Company, 228 NLRB 646 (1977). However, plant clericals are excluded from a unit of drivers when their duties do not directly relate to the delivery operation. Independent Linen Service Co., 122 NLRB 1002 (1959). Office clerical employees are excluded from the unit, even when they have the same supervision and compensation as plant clerical employees. Lilliston Implement Company, 121 NLRB 868, 870 (1958). Similar to determining the appropriateness of a unit, a community of interest analysis is used to distinguish office and plant clerical employees. Cook Composites & Polymers Co., 313 NLRB 1105, 1108 (1984).

Employees' community of interest is determined by weighing such factors as the difference in wages or compensation, hours of work, employment benefits, supervision, and the difference in qualifications, training, skills and job functions. The Board also considers the amount of time spent away from the plant or employment situs, the extent of integration with the work functions of other employees, interchange and bargaining history. Overnite Transportation Co., 322 NLRB 723 (1996); Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In Independent Linen Service Co., 122 NLRB 1002 (1959), the Board excluded plant clerical employees, titled "auditors", from a unit of drivers. The auditors worked out of the same location as the drivers. They maintained inventory records and occasionally traveled with the drivers to check inventory at the customer's site. The Board found the clerical functions performed by the auditors were not directly related to the "driving operation" and that a drivers unit is of the type "customarily" found appropriate. Id. at 1004.

In Mitchellace, Inc., 314 NLRB 536, 537 (1994), the Board excluded office employees from a production unit, finding them to be office clerical employees, where their duties included production reports used to track productivity. The production employees prepared data sheets at the end of their shifts, which were used by the office employees to input information into a computer. If the office employees had questions concerning the data, they spoke with the production employees by telephone or in person. The office employees worked in a separate office area, were paid on an office pay scale, and were supervised separately.

In Avecor, Inc., 309 NLRB 73 (1992), the Board excluded order entry clerks and lab secretaries from the unit as office clerical employees. The order entry clerk received product orders that had been phoned in by customers and prepared paperwork using office equipment and a computer. The order entry clerk also generated shipping paperwork and supplied order information to a production manager and shipping information to the shipping department. The order entry clerk had a standard workday and week, unlike the production employees who had longer hours. Although the order entry clerk entered the production area four to five times a day, the Board found that the clerk had only incidental contact with the production employees. The lab secretary worked in an office adjacent to the main office and used a computer terminal and other office equipment for her work. She produced paperwork for the lab and generated production reports. She prepared paperwork associated with shipping. She spent approximately 25 percent of her time out “in direct contact with lab or production employees.” Id. at 75. She was hourly paid and received the same fringe benefits as the employer's other employees. The lab secretary had separate supervision.

The Board in Avecor found that the order entry clerk and the lab secretary were properly excluded from the unit because they were "principally performing work typically accomplished

by office clerical employees," which was "incidental to, and not an integral part of, the production process." Id. at 75. In reaching this conclusion, the Board noted that the employees in dispute were working in an office and had limited contact with unit employees. The Board also relied on the fact that these employees worked office hours, which were distinct from the production hours, and regularly used office equipment typically used by office clerical employees.

I find that the CSRs are office clerical employees and that they should be excluded from the unit on that basis. I also find that the CSRs are not sufficiently integrated with the delivery and HVAC operation to mandate their inclusion in the unit. See Independent Linen Service Co., 122 NLRB 1002 (1959).

In the instant case, the drivers' and technicians' job duties are primarily performed away from the Employer's facilities. The drivers and technicians spend most of their time on the road and at the customers' locations. The CSRs work in offices, separate from storage areas for the product and equipment used by the drivers and technicians. The technicians and drivers have significantly different working conditions from those of the CSRs. They work after regular business hours, while the CSRs do not. The drivers and technicians rotate serving as backup to the "on call" drivers and technicians who work after hours and weekends. Approximately 15 of the technicians work staggered shifts after hours, when the CSRs are not working. The technicians are dispatched from home and at the conclusion of the workday, they drive their vehicles home. The drivers and technicians regularly work until the assignment is complete on a 24-hour schedule during the weekday and weekend. The CSRs work a regular weekday schedule during normal business hours. The CSRs and production coordinators wear business

attire, rather than the uniforms worn by the drivers and technicians. The CSRs are supervised separately from the drivers and technicians.

There is no evidence of interchange between the petitioned-for employees and the CSRs and it is unlikely that the CSRs would have the necessary skills to perform the driver and technician duties. The CSRs receive delivery and service orders from customers and sales personnel, not from the drivers and technicians. Using the computer based scheduling system, the CSRs input into an available slot the time needed for the employee to perform the HVAC service. The schedules in the HVAC department are generated from this system. Most delivery requests are automatically generated. CSRs involvement includes inputting information into the customer's account. A delivery ticket is created on the computer, and the delivery request is placed in the "memo" section. The ticket information is interfaced with the drivers' handheld computers. CSRs only contact the drivers and technicians when there are unscheduled deliveries or problems.²⁷ The CSRs do have some communication or contact with drivers and technicians concerning problems with payroll, production reports, HVAC orders, handheld downloads and changes to weekly delivery schedule. It is not clear from the record whether it is necessary for the CSRs to contact the drivers for unscheduled deliveries because the ticket information is interfaced with their handheld computers, and Gumpner is directly responsible for dispatching the technicians using the dispatch telephone when needed. In any event, the CSRs contact with the drivers and technicians is insufficient to warrant the CSRs inclusion in the unit. See Avecor, Inc., 309 NLRB at 75 (25 percent "direct contact" with production employees is insufficient to include clerical employees in a production unit). In addition, the Board excluded clerical employees from a production unit, who processed customer product orders for the warehouse

²⁷ The Employer contends that the tasks described above are "dispatching" duties that warrant the CSRs inclusion in the unit. Employees with only dispatching functions were excluded from a drivers unit, where the drivers had different hours, skills, wages and wore uniforms. St. John's Associates, Inc., 166 NLRB 287 (1967).

employees. Esco Corporation, Inc., 298 NLRB 837 (1990). In so finding, the Board noted that there was no interchange between the clericals and production employees.

The Brewerton CSRs perform additional administrative duties that are indicative of office clerical employees. These duties include company inventory, handling sales calls from previously undecided customers, billing, resolving customer complaints, payroll, reviewing end-of-the-day reports and customer satisfaction calls. See Dunham's Athleisure Corp., 311 NLRB 175 (1993) (office clerical duties include billing, payroll, answering telephones, and receiving and delivering mail); Jakel Motors, 288 NLRB 730, 742 (1988)(inputting production data and distributed reports to various production departments were excluded from the unit as office clerical.)

The Minoa CSRs perform many office clerical duties. They handle incoming telephone calls, set up customer accounts, type the delivery tickets using a computer, input HVAC order requests into the customer service program, generate and mail letters to customers, perform customer payment collections and customer credit management. The record does not indicate the percentage of the time they are in contact with the technicians and drivers, relative to the performance of their other duties.

The Minoa CSRs also perform tasks for the retail gas station that are unrelated to the work of the petitioned-for employees. For the retail gas station, they change gas prices, assist with the credit card machine and the Minoa cash reports. They also review customer accounts for overdue accounts and are directly involved in collections. They generate letters to customers, via computer, seeking payment for past due accounts at the gas station.

The Minoa CSRs are separately supervised from the employees in the petitioned-for unit. They order product for the DeWitt facility and schedule deliveries from the Watertown facility for the Cazenovia gas station via the contract haulers.

While CSR's in DeWitt perform the same function for the drivers and technicians such as providing service orders and delivery tickets, the Employer does not seek to include the DeWitt CSRs in the unit.

Thus, I conclude that the CSRs should be excluded from the petitioned-for unit because they are office clerical employees, and, because they do not share a sufficient community of interest with the employees in the unit.

I further find that the plant employee I, Timothy Ezzo, lacks a community of interest with the employees in the petitioned-for unit. The plant employee I is not a plant clerical employee as contended by the Employer. A plant clerical employee shares a community of interest with production employees when they "perform functions closely allied to the production process or to the daily operations of the production facilities." Palagonia Bakery Company, Inc. 339 NLRB No. 74 slip op. at 41 (July 10, 2003) citing, Fisher Controls Co., 192 NLRB 514 (1971). Here, Ezzo's duties are substantially unrelated to those of the petitioned-for employees. He is hourly paid (\$11.48 per hour), performs janitorial work at the Minoa facility, works with the gas station cash receipts, and administers payroll for the contract haulers. He has no contact with the drivers and technicians, except when they inform him of a need for grounds maintenance, including shoveling snow, mowing the lawn, spreading stones, cleaning up fuel spills or changing light bulbs. He is a part-time employee with hours from 4:00 or 5:00 a.m. until noon. I conclude that the plant employee I does not share a community of interest with the petitioned-for employees and should be excluded from the unit.

The Employer seeks to include production coordinator Cheryl Orizino in the unit. Her primary duties are to maintain liquid fuel and propane inventory at the Brewerton and Minoa facilities. She also inputs payroll data in a computer and prepares the drivers' productivity reports that are used by the distribution manager and Syracuse market manager to evaluate the drivers' performance.

In Virginia Manufacturing, supra, the Board found that employees who prepared daily production and inventory reports which were designed to measure efficiency of employees were office clerical employees, in part because their reports could be viewed by workers as being adverse to the production workers' employment interests, despite the fact no instances of a report leading to disciplinary action had been demonstrated.

Maintaining inventory records and even occasional contact with the drivers is not directly related to the delivery operation. Independent Linen Service Co., 122 NLRB at 1004. Orizino's contact with the drivers is minimal with regard to reconciling inventory reports and payroll. Like the CSRs, she works in the office common area, is subject to the office business attire dress code, and does not work after hours like the drivers and technicians. She reports directly to the Syracuse market manager and is the former manager of the Minoa and Pulaski facilities. Orizino also has substantial duties unrelated to the delivery and service operations such as assisting customers with financing services and performing payment transactions with walk-in customers at the Brewerton location. I also note that Employer does not seek to include the production coordinator at Pulaski who performs similar inventory duties as Orizino. I conclude that the production coordinator is an office clerical employee, or alternatively, does not perform work sufficiently integrated with the drivers and technicians to warrant the inclusion of the production coordinator in the unit.

The Petitioner asserts that service coordinator Richard Gumpper is a statutory supervisor pursuant to Section 2(11) of the Act. Specifically, the Petitioner contends that Gumpper has the authority to independently direct the work of the Agway technicians. The Employer contends that Gumpper is not a Section 2(11) supervisor and that he should be included in the unit because he shares a community of interest with the petitioned-for unit.

Section 2(11) of the Act defines a statutory supervisor as any individual with the authority to engage in one or more of the following, in the interest of the employer:

hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The party that asserts an individual has supervisory authority has the burden of proof.

NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001). An individual only needs to possess one of the indicia of authority in order to be a statutory supervisor under Section 2(11), as long as the exercise of such authority is carried out in the interest of the employer, and requires the exercise of independent judgment. California Beverage Co., 283 NLRB 328 (1987). Individual's who exercises some "supervisory authority" in a routine, clerical, or perfunctory manner will not be found to be a supervisor. Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986).

The Board has found the use of independent judgment to assign work when the individual has the authority to prioritize work assignments, discretion to assign work to specific employees of their choosing and is identified as the only one making such assignments on a daily basis.

Arlington Masonry Supply, Inc., 339 NLRB No. 99 (July 21, 2003).

Applying the above, I find, that Richard Gumpfer is a supervisor within the meaning of Section 2(11) of the Act. He has the discretion to assign work performed each day based on his projection of the number of jobs to be performed and the length of time needed to perform a job. Based on his projections, he coordinates service delivery for the HVAC department to meet the departmental budget. Gumpfer testified that he does this by dispatching technicians in the most productive manner.²⁸ In this regard, he considers the technicians' workload, knowledge and skill level, and the geographical location of the job and employees. Based on his own assessment of work volume, Gumpfer reassigns work from one technician to another. He also moves technicians from one Agway facility to another throughout the workday. Technicians contact Gumpfer when they are behind schedule on an assignment so he can reassign the technician's next assignment to another technician. Each day he arranges the assignments to the technicians to make their work more productive.

Gumpfer assigns work independently of the HVAC manager. Although the HVAC manager determines the overall number of technician work hours, Gumpfer makes the daily assignments. In this regard, Patraw described the HVAC manager as more of a "business manager" who does not get involved with a great "level of detail." Thus, the record establishes that Gumpfer is solely responsible for assigning work on a day-to-day basis in the department.

The Employer citing, Jordan Marsh Stores, 317 NLRB 460 (1995) and BP Oil, Inc., 256 NLRB 1107 (1981), asserts that scheduling and dispatching is a routine function that does not include the use of independent judgment. In Jordan Marsh Stores, the Board found an employee not to be a supervisor because the employee at issue scheduled employees according to the days

²⁸ Gumpfer is evaluated on the department's "contribution, overhead and profit levels" relative to the department's budget.

the employees normally worked and could not change employee shifts. Also employees were hired for “specific shifts and hours.” *Id.* at 467.

Here, Gumpfer selects job assignments and assign jobs to a particular technician based on Gumpfer’s assessment of a variety of factors, including the technician’s knowledge and skill, workload and geographical proximity to the job site. Gumpfer’s immediate supervisor, HVAC manager Lloyd, is located at the Phoenix facility, and is described in the record as a business manager who is not involved in the direct assignment of work. Gumpfer is the only one identified to assign work to the technicians on a daily basis. In addition, Gumpfer is evaluated on the entire department’s “contribution, overhead and profit levels” relative to the department’s budget. Therefore, I conclude that the service coordinator has the authority to independently assign and direct work, and is thus a supervisor within the meaning of Section 2(11) of the Act. I shall exclude him from the unit on that basis.²⁹

CONCLUSION

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time delivery and propane drivers, master technicians, propane technicians I and II, service technicians I, II and III, installers and installer helpers employed by the Employer at the Employer’s 320 North Central Avenue, Minoa, New York; River Road, Brewerton, New York; and Rome Street, Pulaski, New York facilities; excluding employees employed at the Phoenix, New York and all other facilities; HVAC manager, customer service manager, distribution manager, Syracuse market manager, customer service representatives, production coordinators, service coordinator, retail gas attendants, sales employees, plant employee I, contract employees, office clerical employees, and all

²⁹ I do not find, as urged by Petitioner that Gumpfer is an office clerical employee. In this regard, the record fails to establish that he “principally perform[s] work typically accomplished by office clerical employees,” which is “incidental to, and not an integral part of, the production process.” *Avecor*, 309 NLRB at 75.

professional employees, guards and supervisors as defined in the Act.

There are approximately 33 employees in the bargaining unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **TEAMSTERS LOCAL 317, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202 on or before May 4, 2004. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by May 11, 2004. .

DATED at Buffalo, New York this 27th day of April 2004.

/s/Helen E. Marsh

HELEN E. MARSH, Regional Director
National Labor Relations Board
Third Region
Thaddeus J. Dulski Federal Building
111 West Huron Street - Room 901
Buffalo, New York 14202